JD(SF)–03–15
San Diego, California

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
DIVISION OF JUDGES, SAN FRANCISCO BRANCH OFFICE

UNITED FOOD & COMMERCIAL
WORKERS UNION, LOCAL 135,
UNITED FOOD & COMMERCIAL
WORKERS INTERNATIONAL UNION,
AFL–CIO, CLC (Ralphs Grocery Company)

and Case 21–CB–112391

BRANDON DION, an Individual

Robert MacKay, Esq., for the General Counsel.
Tamra M. Smith, Esq.
(Schwartz, Steinsapir, Dohrmann & Sommer, LLP),
for the Respondent.
Glenn M. Taubman, Esq.
(National Right to Work Legal Defense Foundation, Inc.),
for the Charging Party.

DECISION

STATEMENT OF THE CASE

AMITA BAMAN TRACY, ADMINISTRATIVE LAW JUDGE. This case was tried in San Diego, California, on December 9, 2014. Brandon Dion (Charging Party or Mr. Dion) filed the charge on August 30, 2013.[1] The General Counsel issued the complaint on June 25, 2014, and issued a notice of approval of partial withdrawal of charge and order dismissing portions of the complaint on October 7, 2014.[2] The United Food & Commercial Workers Union, Local 135, United Food & Commercial Workers International Union, AFL–CIO, CLC (Respondent or the Union) filed a timely answer denying all material allegations.

The complaint alleges that the Union violated Section 8(b)(1)(A) of the National Labor Relations Act (the Act) by: (1) failing to provide since August 19, the Charging Party with a detailed apportionment of its expenditures for representational and nonrepresentational activities, and a detailed apportionment of the expenditures for representational and nonrepresentational

[1] All dates are 2013 unless otherwise indicated.

[2] On October 7, 2014, the General Counsel dismissed paragraphs 8 and 9 of the complaint. Thus, those allegations are no longer before me, and will not be discussed in this decision.

activities of the Union's affiliates; and (2) promulgating and maintaining a rule since at least July 2013 requiring all new employee hires to visit the Union office to affiliate in person, including as *Beck* objectors,[3] thereby implicitly threatening employees with discharge pursuant to the union-security clause for reasons other than failure to pay dues and fees.

On the entire record,[4] including my observation of the demeanor of the witnesses, and after considering the briefs filed by the General Counsel, Respondent and the Charging Party, I make the following

FINDINGS OF FACT

I. JURISDICTION

At all times material, Ralphs Grocery Company (Employer or the Company), has been an Ohio corporation with a retail grocery store and place of business in Oceanside, California, and has been engaged in the retail sale of groceries and related items. The Company, at all material times, annually derives gross revenues in excess of $500,000, and annually purchases and receives at the Oceanside, California grocery store goods valued in excess of $50,000 from points outside the State of California. It is alleged in the complaint, not denied by the Union (and therefore deemed admitted),[5] and I find, that at all material times, the Company has been an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act. The Union admits and I find that it is a labor organization in San Diego, California, within the meaning of Section 2(5) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

A. Background

The germane facts in this case are undisputed. From March 7, 2011 to March 2, 2014, the Union and the Company have been parties to a collective-bargaining agreement (the Agreement) which governed the terms and conditions of the Charging Party's employment at the Oceanside, California retail grocery store (Jt. Exh. 1). Since March 3, 2014, the Union and the Company have been parties to the successor Agreement which governs the terms and conditions of the Charging Party's employment at the Oceanside, California retail grocery store (Jt. Exh. 1).

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[3] The phrase "*Beck* objectors" refers to *Communications Workers v. Beck*, 487 U.S. 735 (1988), pursuant to which a represented employee who objects to paying full dues may pay a reduced fee.

[4] Abbreviations used in this decision are as follows: "Tr." for transcript; "GC Exh." for General Counsel's exhibit; "R. Exh." for Respondent's exhibit; "CP Exh." for Charging Party's exhibit; "Jt. Exh." for joint exhibits; "GC Br." for the General Counsel's brief; "R. Br." for the Respondent's brief; and "CP Br." for the Charging Party's brief. Although I have included several citations to the record to highlight particular testimony or exhibits, I emphasize that my findings and conclusions are based not solely on the evidence specifically cited, but rather are based my review and consideration of the entire record.

[5] See Board Rules and Regulation Sec. 102.20.

Both the past and current Agreement contains the same employment procedures at article 2 including the union-security clause and its enforcement.

The union-security clause at article 2(A) of the Agreement states:

> All employees shall, as a condition of employment, pay to the Union the initiation fees and/or reinstatement fees and periodic dues lawfully required by the Union. This obligation shall commence on the thirty-first (31st) day following the date of employment by the Employer who is signatory to this Agreement, or the effective date of this Agreement, or the date of signature, whichever is later

(Jt. Exh. 1(A)).

The Agreement further states that article 2 shall be implemented and enforced as follows:

> 1. Introductory Letter. This letter will be sent by the Union to the employee's home […], or to the store where the employee is employed.
> (a) This letter will quote the language of Article 2-A of this Agreement and advise employees of the Union's office hours and other matters relating to the employee's satisfaction of his obligations under Article 2-A of this Agreement.

Article 2(D)(a).

If an employee is delinquent in paying his financial obligations to the Union, the Union sends the employee a delinquency letter with copies to the Employer's Industrial Relations Department and the store manager (Jt Exh. 1(A) at Article 2(D)(3)). The penalty for noncompliance includes discharge if the obligation has not been met.

Since July 2013, the Union sends all the Company's new hire employees, who are part of the bargaining unit, a welcome letter notifying them "that they must come to the Union's office to affiliate in person" (Jt. Exh. 1).[6] The Union also informs the new hire employees verbally of this requirement (Jt. Exh. 1).[7] If a new hire employee works in a Company location that is far from a Union office, then that new hire employee may affiliate by written correspondence (GC Exh. 2; Tr. 89). Rosalynn Hackworth, who has been the Union secretary-treasurer since at least

[6] Affiliate, as used by the parties in this matter, means to join the Union as full members or as nonmembers such as *Beck* objectors; members who pay full dues but do not want to be members of the Union due to a variety of reasons such as religious beliefs; and conscience objectors who seek to have their dues donated to a charity (Jt. Exh. 1; GC Exh. 2; R. Exh. 1; Tr. 69–70).

[7] Per the parties' stipulation, since July 1, 2013, approximately 99% of the Company's new hire employees have come to the Union office to affiliate in person (Jt. Exh. 1). Also between July 1, 2013 and October 31, 2014, 2,536 of the Company's new hire employees affiliated with the Union, and only 3 new hires chose not to affiliate with the Union as members, and instead became *Beck* objectors (Jt. Exh. 1).

July 2013,[8] testified that the Union "prefer[s]" employees to affiliate in person rather than by mail or phone call because they have encountered issues in the past of fraudulent withdrawals from the Union (Tr. 59-61, 75). Furthermore, Hackworth testified that the Union gives new hire employees current information on their Union representative and updates the employee's address (Tr. 63). Hackworth stated that the Union did not consider the statement in the welcome letter that new hire employees "must come to the Union's office to affiliate in person" as a "rule" but just a "policy" with "no repercussions if someone fails not to come in" (Tr. 61). The affiliation procedure is the same for all new hire employees, whether they become full members or not (Tr. 62–63, 90). Hackworth testified that the Union has never sought an employee's removal for failure to affiliate in person (Tr. 62).

B. The Charging Party's Affiliation With the Union

On or about June 29, 2013, Mr. Dion commenced employment with the Company as a courtesy clerk at its retail grocery store in Oceanside, California (Jt. Exh. 1; Tr. 23). On July 12, the Union sent Mr. Dion a standard form letter and other documents which it has sent to all the Company's new hire employees since July 2013 (Jt. Exh. 1, 1(2)). The standard form letter states in pertinent part:

> The contract between Local 135 and your employer requires that we inform you of the following: "All employees shall, as a condition of employment, become members of the Union no later than the thirty-first (31st) day following the date of signature or the effective date of this agreement, whichever is later, and shall remain members in good standing as a condition of continued employment."
>
> All new hires are required to come into one of our offices to affiliate **in person** with Local 135.

[Emphasis in original] (Jt. Exh. 1(2)). These two paragraphs follow one another directly in the welcome letter. Along with the standard form letter, the Union sent Mr. Dion further instructions on affiliation, and stated, "It is in your best interest that you come in to join as soon as possible. The sooner you come in, the less money you will need to pay up front" (Jt. Exh. 1(2)). In another single-spaced, small print document, entitled, "Constitution of the United Food and Commercial Workers' International Union," provided to Mr. Dion on July 12, the Union included information on employee rights not to join. This document states in the middle of the second page, "In accordance with a U.S. Supreme Court Decision, you have the right to refrain from being a member of the union. In such case, you would pay a reduced fee that reflects the cost of representation. Please notify the union, in writing, if this is the route you choose, and you will be provided additional information" (Jt. Exh. 1(2)).

After receiving the Union's July 12 letter, Jennifer Dion (Ms. Dion), the Charging Party's mother, called the Union office to understand her son's options regarding membership in the Union (Tr. 32, 40–41). Ms. Dion testified that she asked if her son declined membership what

[8] Per the parties' stipulation, at all relevant times, Hackworth has been an agent of the Union within the meaning of Sec. 2(13) of the Act (Jt. Exh. 1).

would be his reduced dues fee amount (Tr. 32, 40–41). The unidentified Union official responded that he did not have this information on the reduced dues fees and that Mr. Dion would need to come into the Union office for the reduced fee calculation (Tr. 32).

On August 16, the Union sent Mr. Dion another letter (Jt. Exh. 1, 1(3)). This letter reminded Mr. Dion of the July 12 letter's outlined requirements to affiliate with the Union per the union-security clause (Jt. Exh. 1(3)). This letter noted that Mr. Dion had not fulfilled his obligation under the union-security clause, and that this letter served as his final notice to tender his dues and initiation fee by close of business September 13 or the Union would proceed with the terms of the union-security clause in the Agreement "which will result in your termination" (Jt. Exh. 1(3)). Mr. Dion could make his payment at one of two Union offices: either in San Diego or San Marcos (Jt. Exh. 1(3)). At the bottom of this letter, the Union provided a breakdown of the due balance owed, $31.75 per month for the months of August through December, for a total dues balance of $127. The initiation fees owed were $80.

A few days later, on August 19, Ms. Dion called the Union office for a second time and spoke to Vicki Miller, a clerk in the membership department (Jt. Exh. 1).[9] Ms. Dion testified that she called to see if the Union had received an August 5 certified letter from the Charging Party declining membership (Tr. 34, 42). Ms. Dion called the Union office because the Union's August 16 letter advised Mr. Dion of his requirement to pay his full dues amount or else he could face termination (Tr. 41). Miller responded that the Union had not received the letter (Tr. 34). Miller advised Ms. Dion that the Charging Party must come to the Union office to affiliate and to receive information on reduced dues (Jt. Exh. 1; Tr. 34). On the Union's member notes screen print from the Union's computer database, dated August 19, Miller confirmed the conversation with Ms. Dion, and noted that she told Ms. Dion that her son "would have to come into the office in person" in response to Ms. Dion's comments that her son had sent in a "certified letter to say that he didn't want to join the union and requested lower fees" (R. Exh. 1).

The next day, on August 20, the Union received the August 5 certified letter from the Charging Party (Jt. Exh. 1, 1(4)). The letter stated:

> I have been hired at a Ralphs store as a part-time courtesy clerk, and I got a letter from you about union membership. **I am notifying you that I want to refrain from being a member of the union.** I may want to join the union later, but right now I am only 16 and working part-time while I go to high school. Because I won't be working a lot of hours and I'm still in high school I am not ready to be a union member.
>
> Please let me know about the reduced fee for non-members. From what I understand this is an agency fee for the costs of collective bargaining, contract administration, and grievance adjustment.

[9] Per the parties' stipulation, at all relevant times, Miller has been an agent of the Union within the meaning of Sec. 2(13) of the Act (Jt. Exh. 1). Ms. Dion testified that she did not know to whom she spoke when she called the Union office (Tr. 34); however, the parties stipulated that Ms. Dion spoke with Miller (Jt Exh. 1).

> Again, I would like to be able to join the union once I am closer to high school graduation.
>
> Thank you for your help with this notice and request for reduced fees.

(emphasis in original) (Jt. Exh. 1(4)).

That same day, Ms. Dion called the Union office for a third time again to ensure that they had received the Charging Party's August 5 letter (Tr. 35). The initial unidentified Union official confirmed that they had received her son's letter, and then transferred the call to Lindsey Bensinger, who heads the Union's membership department (Jt. Exh. 1; Tr. 36).[10]

According to Ms. Dion, Bensinger told her that the Charging Party must join the Union (Tr. 36, 43–44). Ms. Dion responded that her son did not need to join the Union according to the Supreme Court (Tr. 36). Bensinger then stated that Mr. Dion had to pay dues and fees, and Ms. Dion acknowledged this requirement but said that her son had not received the reduced fee amount (Tr. 36). Again, Bensinger informed Ms. Dion that her son must come to the Union office to affiliate and receive information on reduced dues fees (Jt. Exh. 1; Tr. 37, 43–44). Ms. Dion disagreed with the Union's insistence for Mr. Dion to come to the Union office (Tr. 37).

Bensinger testified that she did not tell Ms. Dion that her son must join the Union (Tr. 83–84).[11] Bensinger stated that she told Ms. Dion that her son could pay reduced dues and become a nonmember but he would need to come into the office to sign up as a nonmember which is a standard practice for all employees who are in the bargaining unit (Tr. 83-–84). Bensinger's contemporaneous notes corroborate her discussion with Ms. Dion (R. Exh. 1).

Thereafter, Bensinger transferred the phone line to Hackworth (Jt. Exh. 1; Tr. 37).[12] Ms. Dion testified that Hackworth informed her that Mr. Dion must come into the Union office to decline Union membership and to supply a variety of other information needed by the Union (Tr. 37). Ms. Dion and Hackworth disagreed on whether Mr. Dion needed to come into the Union office, and the conversation ended (Tr. 37–38).[13]

When Hackworth testified regarding this conversation, she essentially confirmed the conversation with slight insignificant variations (Tr. 55–56). Hackworth did confirm that she

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[10] Per the parties' stipulation, at all relevant times, Bensinger has been an agent of the Union within the meaning of Sec. 2(13) of the Act (Jt. Exh. 1). Although Ms. Dion could not identify the speaker on the phone, the parties stipulated that Ms. Dion spoke with Bensinger (Jt. Exh. 1).

[11] Although Bensinger and Ms. Dion's testimony differed on this point, I do not make any credibility findings here because the issue is irrelevant to this case.

[12] Again, although Ms. Dion could not identify the speaker on the phone, the parties stipulated she spoke with Bensinger as well as Hackworth (Jt. Exh.1).

[13] On cross-examination, Ms. Dion testified that she could not recall if during the August 20 conversation with the Union, if any Union official mentioned the terms "non-member" status or "*Beck* status" (Tr. 45–-46). Ms. Dion testified that she did not know what either of those terms meant (Tr. 45–-46).

informed Ms. Dion that the Union "prefer[red]" employees to come to the Union office to complete the paperwork (Tr. 55). Hackworth's note in the Union's member notes screen print corroborates her conversation, and the statements she made to Ms. Dion (R. Exh. 1). Hackworth noted that she spoke to Ms. Dion about the process for joining, and she "just need[ed] [the Charging Party] to come in to complete paperwork (our standard procedure[. . .])" even though she acknowledged that the Charging Party "had already written a letter explaining his intent" (R. Exh. 1).

On August 22, the Union sent Mr. Dion two letters (Jt. Exh. 1, 1(5)). The first letter to Mr. Dion acknowledged that the Union had received his request for reduced dues (Jt. Exh. 1(5); Tr. 85–86). Mr. Dion's new dues rate set by the Union was $26.34 per month with an initiation fee of $66.38. This letter further stated, "**You will need to come in and sign up as a Beck member and relinquish your rights as a union member**" (Jt. Exh. 1(5) (emphasis in original). As of that day, Mr. Dion owed $26.34 for the month of August for his dues balance and $66.38 for his initiation fee (Jt. Exh. 1(5)).

The other letter sent by the Union to the Charging Party enumerated the benefits and costs with joining the Union versus becoming a nonmember (Jt. Exh. 1, 1(6)). This letter informed Mr. Dion he would be paying a service fee of 82.97 percent of the full dues owed by members based on its expenses for representational and nonrepresentational activities (J. Exh. 1(6)). An accountant derived the calculations, and the letter provided examples of representational and non-representational activities (Jt. Exh. 1(6)). If he disagreed with the amount he owed, Mr. Dion could request further reduction of his fees, and request a hearing to determine the accuracy of the reduction (Jt. Exh. 1(6)). Bensinger noted in the Union's member notes screen print, dated August 22, that she had mailed Mr. Dion a letter advising him of "new Beck rates and amount owed as of August" (R. Exh. 1).

On August 28, the Union received the Charging Party's payment, and activated him as a *Beck* member (R. Exh. 1).

III. ANALYSIS

A. Respondent Failed to Provide the Charging Party With The Detailed Apportionment of Its Expenditures After He Requested Reduced Dues and Fees

The complaint alleges, at paragraph 10 and 12, that since approximately August 19, Respondent has failed to provide the Charging Party with a detailed apportionment of its expenditures for representational and nonrepresentational activities, and a detailed apportionment of the expenditures for representational and nonrepresentational activities of Respondent's affiliates. The General Counsel alleges that this conduct restrains and coerces employees in the exercise of their rights guaranteed by Section 7 of the Act, in violation of Section 8(b)(1)(A).

In *California Saw & Knife Works*, 320 NLRB 224 (1995), the Board set forth a three stage process to implement the Supreme Court decision in *Communications Workers v. Beck*, 487 U.S. 735 (1988). At the first stage, before a union seeks to obligate an employee to pay fees and dues under the union-security clause, the union is required to inform the employee of the right to not join the union; employees who choose to be nonmembers then have the right to

object to paying for union activities not related to the union's duties as bargaining agent and to obtain a fees reduction for such activities. The union should also at this stage provide sufficient information for the employee to intelligently decide whether to object to those calculations, and to be apprised of any internal union procedures for filing objections to the calculations. This information is known as the initial notice.[14]

If an employee decides not to join the union and also exercises his or her *Beck* right to object to paying for nonrepresentational activities, *California Saw* requires, at stage two, that the union informs the *Beck* objector of the percentage of dues reduction he or she will receive, the basis for the calculation, and the right to challenge those figures. At stage two, an employee who objects must be informed of the percentage of reduction, the basis for the calculation and the right to challenge the number. *California Saw*, supra at 233. The fundamental purpose of providing objectors with information regarding the allocation of chargeable and nonchargeable expeditures is to allow the employee to decide whether he or she should challenge the allocation. Id. at 240.

The third stage involves objectors who challenge the union's determination of which of its expenses are chargeable representational expenses or the computations underlying the determination. *Kroger Limited Partnership*, 361 NLRB No. 39, slip op. at 3 (2014). A union is not required to calculate and provide such detailed information required at stage three until an employee elects nonmember status and then takes the additional step of filing an objection regarding the chargeable expenses or to challenge the underlying computations. Id.

Here, the Charging Party requested not to be a member of the Union because he was 16 years old, in high school and not working many hours (Jt. Exh. 1(4)). He requested to only pay "an agency fee for the costs of collective bargaining, contract administration, and grievance adjustment" (Jt. Exh. 1(4)). An employee can have three relationships with the union. Under the Act, an employee may be a member, a nonmember with "agency fees" equivalent to full union dues, or a nonmember *Beck* objector, with a requirement to only pay the percentage of agency fees used for representational purposes. Under *Beck*, a union nonmember may be required, as a condition of employment, to support only those union activities which are related to collective bargaining, contract administration, and grievance adjustment. Employees who declare themselves nonmember *Beck* objectors are entitled to have their union fees reduced by the amount of union expenditures over and above this "financial core." *Machinists Local 2777* (*L-3 Communications)*, 355 NLRB 1062 (2010).

Unlike the employees in *Beck* or *California Saw*, the Charging Party did not object to

[14] It is unclear whether the documents admitted into evidence consistent of the entire "welcome package" sent to new employee hires. Among the documents admitted the only notice given to the Charging Party regarding his rights not to join the Union is a three sentence statement in the Union's constitution informing new hire employees that if desired they "can pay a reduced fee that reflects the cost of representation" but must notify the union and will be given more information. If this is the only information regarding other membership options provided in the Union's welcome package, then it is dubious if the Union has complied with the requirement of a clear initial notice per *California Saw*.

being a member of the Union on the basis of ideological, philosophical or moral grounds but rather on his practical circumstances of not working many hours and being in high school. He also did not use the phrase, "*Beck* objector" in his letter.[15] However, Mr. Dion closed his August 5 letter with a request for reduced fees limited to representational activities, and asked what his reduced fee for nonmembers would be. Essentially, the Charging Party affirmatively requested to be a nonmember *Beck* objector since he wanted to pay reduced dues limited to representational purposes.

Respondent also during the course of events in 2013 treated Mr. Dion as a *Beck* objector, both in their contemporaneous notes and written letters to the Charging Party. Now, Respondent argues that Mr. Dion was not actually a *Beck* objector but rather sought to be a nonmember (R. Br. at 18–19). By simply requesting to be a nonmember without mentioning *Beck*, the Union now argues that it was not obligated to provide the details required in *California Saw*. However, the Union's argument fails because even though the Charging Party did not use the phrase "*Beck* objector" or fully articulate that he sought to be a nonmember objector, he did ask for reduced fees for representational purposes only. The Charging Party would not ask to be only a nonmember (without objector status) because he would still pay the equivalent of full Union dues; Mr. Dion clearly sought to pay a reduced fee amount limited to representational activities. Furthermore, throughout the course of these events, the Union treated the Charging Party as a *Beck* objector, and never sought to clarify his requested status if confusion existed. Thus, I find that the Charging Party requested to be a *Beck* objector, Respondent treated him as such, and cannot now argue that he did not actually request to be a *Beck* objector.

Once the Charging Party declared his request to only pay for representational activities, the Union became obligated to provide Mr. Dion the percentage reduction in Union fees, the basis for calculation and the right to challenge the calculations. With regard to the basis for the calculation, a union must provide a breakdown of its calculations by "major categories" of expenditures designating which are chargeable and nonchargeable to the objector. *Teamsters Local 75 (Schreiber Foods)*, 329 NLRB 28 (1999) (citing *California Saw*, supra at 239). These major categories should be sufficient "to enable objectors to determine whether to challenge" a union's claim that the designated expenditures are for representational activities. Id.

In contrast, the Union provided Mr. Dion with the percentage reduction and the right to challenge the calculations, but failed to provide him the basis for the calculation (Jt. Exh. 1(6)). The Union merely informed Mr. Dion that he would pay 82.97 percent of normal dues, and provided "examples" of chargeable representational activities these dues would cover such as negotiations with the employer and informal meetings with the employer. By not giving the Charging Party a breakdown of all major categories of expenditures within the chargeable activities, the Union failed to give sufficient information to Mr. Dion to enable him to decide whether he wanted to challenge the figures. *Teamsters Local 75 (Schreiber Foods)*, supra at 33. The major categories include per capita tax, salaries, expense allowance, contributions, benefits, professional fees, meeting and committee, automobile, out-of-town travel, education and publicity, stewards, building maintenance, and administrative expenses. *California Saw*, supra.

[15] Ms. Dion who spoke to the Union on her son's behalf also testified that she was unaware of the phrase "*Beck* objector."

Hence, the Union failed to provide the Charging Party with enough information to question specific categories. Furthermore, if there are any affiliates with which the Union shares income that income should be broken down as well. *Teamsters Local No. 579 (Chambers & Owen, Inc.)*, 350 NLRB 1166, 1170 (2007). Thus, Respondent violated Section 8(b)(1)(A) of the Act by failing to provide the Charging Party the basis for the calculation of reduced fees as a *Beck* objector.

The General Counsel also argues that the Union failed to provide the Charging Party with independent verification of its expenditures per *California Saw*, supra at 240–242, and *Television Artists AFTRA* (*KGW RADIO*), 327 NLRB 474, 479 (1999). The Union simply stated that the calculations for the reduced fees had been made by an accountant, and did not specify in its letter to the Charging Party that its calculation of expenditures had been independently verified (Jt. Exh. 1(6)). The Board stated in *Kent Hospital*, 359 NLRB No. 42, slip op. at 4 (2012) that the duty of fair representation does not impose a per se obligation on unions to provide objectors with an audit verification letter. Thus, I agree that the Union failed to indicate if its expenditures had been independently verified but per *Kent Hospital*, the Union need not provide an audit verification letter at the second stage of *California Saw*.

Accordingly, I find that Respondent violated Section 8(b)(1)(A) of the Act when it failed to provide the Charging Party with a detailed apportionment of its expenditures for representational and nonrepresentational activities, and a detailed apportionment of the expenditures for representational and nonrepresentational activities of Respondent's affiliates, if any.

B. Respondent's Requirement That New Hire Employees Affiliate In-Person At the Union Office and That The Charging Party File His *Beck* Objection In-Person Violates Section 8(b)(1)(A) of the Act

The complaint alleges, at paragraph 11 and 12, that since July 2013, Respondent has promulgated and maintained a rule requiring all new hire employees to affiliate in-person in the office in conjunction with their obligations under the union-security clause. Furthermore, Respondent required the Charging Party to file his nonmember or *Beck* objection in-person. By promulgating and maintaining this in-person affiliation rule, Respondent has implicitly threatened employees with discharge pursuant to the union-security clause for reasons other than failure to pay dues and fees. The General Counsel alleges that this conduct restrains and coerces employees in the exercise of their rights guaranteed by Section 7 of the Act, in violation of Section 8(b)(1)(A).

Section 8(b)(1)(A) of the Act prohibits an exclusive bargaining representative from restraining or coercing employees in the exercise of their Section 7 rights, which includes the right to refrain from joining a union. Section 7 provides that employees have the right to engage in concerted activities and the "right to refrain from any and all such activities." Section 8(b)(1)(A) of the Act permits the rights of labor organizations to establish and enforce rules of membership and to control their internal affairs but this right is not without limit. This right is limited to union rules and discipline which affect the employees' rights as union members but cannot be enforced by action affecting the employment status of the employee.

The Act at Section 8(a)(3) permits employers and labor organizations to enter into collective bargaining agreements where employees, as a condition of employment, may be required to make certain payments to the labor organization. Under these union-security clauses, employees cannot be required to join or maintain membership in a union in order to retain their jobs. As stated previously, an employee may have three relationships with a union. Under the Act, an employee may be a member, a nonmember with "agency fees" equivalent to full union dues, or a nonmember *Beck* objector, with a requirement to only pay the percentage of agency fees used for representational purposes. *Communications Workers v. Beck*¸ supra; *Marquez v. Screen Actors Guild*, 525 U.S. 33 (1998). Membership, as it relates to employment rights, may be conditioned only upon payment of fees and dues. *NLRB v. General Motors Corp.*, 373 U.S. 734, 744 (1963). Employees must be allowed at least 30 days to join or object to joining the labor organization, and only when the employee fails to pay the appropriate dues may the union-security clause be invoked to cause the employee's discharge on a uniform, non-discriminatory basis. *Telegraphers Union v. NLRB*, 347 U.S. 17, 40 (1954).

In *Plumbers Local 314 (American Fire Sprinkler Corp.)*, 295 NLRB 428, 428 (1989), the Board held that the union violated Section 8(b)(1)(A) of the Act by implicitly threatening "employees who are fined that they may suffer a loss of employment [for] reasons others than failure to pay dues or initiation fees." See also *Remco Maintenance Corp.*, 305 NLRB 943 (1991) (threatening employee with dismissal from current employment for failure to attend a union meeting violates Sec. 8(b)(1)(a)); *Laborers Local 1445 (Badger Plants)*, 266 NLRB 386 (1983); *Elevator Constructors Local 8 (San Francisco Elevator),* 243 NLRB 53 (1979), motion for rehearing denied, 248 NLRB 951 (1980), enfd. 665 F.2d 376 (D.C. Cir. 1981); Longshoremen *ILWU Local 13*, 228 NLRB 1383, 1385–1386 (1977), enfd. 581 F.2d 1321, 1322–1323 (9th Cir. 1980); *Teamsters Local 287 (Airborne Express)*, 307 NLRB 980 (1992). In *Plumbers Local 314*, the union's constitution required employees to pay their national and local assessment, disciplinary assessments and loans before accepting payment of their dues. The collective bargaining agreement between the union and the employer required employees to become members of, and maintain membership in, the union as a condition of employment. To become members of, and maintain membership in the union, employees must pay dues to the union. Thus, when read in conjunction, the union's maintenance of the requirement of receiving payment for these assessments and loans before accepting dues payment from employees, which is a condition of employment, implicitly threatens employees with discharge for reasons other than failure to pay dues and initiation fees.

As the General Counsel argues, the situation presented in this case is analogous to that found in *American Fire Sprinkler Corp.*, supra. Here, employees must pay dues as a condition of employment. However, before the Union accepts the payments from the employees, the employees must first go to one of two Union offices to affiliate. The Union makes exceptions for those employees who do not work near a Union office, or who may have some other impediment from coming to the Union office. However, in the initial membership letter most new hire employees receive, the Union, in bold letters, requires employees to come into the Union office to affiliate their membership. The Union does not make clear in these welcome letters that employees have options other than coming into the Union office to affiliate. Even after receiving Mr. Dion's letter requesting that he be given reduced dues because he did not want to join the Union as a full member, the Union still sent him a letter with bold letters requiring that he come to the Union office to affiliate as *Beck* objector. The Union never

explicitly stated to Mr. Dion that his employment would not be affected for failing to come into the Union office to pay his dues. Thus, I find that the requirement to come to the Union office in-person to affiliate before the employee may tender dues and fees as required to maintain employment violates Section 8(b)(1)(A) of the Act.

It is of no consequence that the Union claims it never threatened, direct or implied, that Mr. Dion could lose his job if he did not come into the Union office. It is also not relevant that the Union did not consider its statement, "All new hires are required to come into one of our offices to affiliate **in person** with Local 135," as a requirement but rather as a "preference." [16] Nor is it relevant that Mr. Dion ultimately did not need to go into the Union office to process his affiliation. The plain reading of the welcome letter places any new hire employee on notice that they are required to pay dues and fees no later than 31 days after being hired, and the only option to do so, or to affiliate, is in person in the Union office.

In addition, the Union required the Charging Party to come to the Union office to file his *Beck* objection despite notification from Mr. Dion in writing with confirmation by Ms. Dion. In *California Saw*, supra at 236–237, the Board held that requiring *Beck* objectors to send their objections via certified mail and in individual envelopes imposes an arbitrary and unlawful restriction on nonmembers exercise of their *Beck* rights, thereby, violating Section 8(b)(1)(A). The Board adopted the Administrative Law Judge's rationale in *California Saw*, supra at 292, when he found that requiring objecting employees to "jump through hoops" to assure the "sincerity" of an employee's objection "upsets the balance struck by the Supreme Court and impermissibly burdens an employee's exercise of his or her statutory rights." Applying the *California Saw* rationale to the facts presented here, I find that the requirement that the Charging Party appear in person, although he ultimately did not need to go to the Union office, to file his *Beck* objection also violates Section 8(b)(1)(A).

The Union argues that its "in-person affiliation practice" should be analyzed under the duty of fair representation standard, not strictly under Section 8(a)(3) of Act (R. Br. 9–16). Even under the duty of fair representation standard, the Union's practice of requiring in-person affiliation violates Section 8(b)(1)(A). A union breaches its duty of fair representation if its actions are arbitrary, discriminatory, or in bad faith. *Air Line Pilots Assn. v. O'Neill*, 499 U.S. 65, 67 (1991); *Vaca v. Sipes*, 386 U.S. 171, 190 (1967). The Board noted that it is mindful of the tension between individual, collective, and public policy interests that lie at the core of the duty of fair representation. *California Saw*, supra at 230. When reviewing these actions, a careful balance must be sought between the competing interests. *California Saw*, 320 NLRB at 230; *L-3 Communications*, 355 NLRB 1062, 1064 (2010). The Union argues that its in-person affiliation practice serves legitimate Union interests and does not unreasonably burden employees Section 7 rights. The Union argues that its practice of in-person affiliation is required to reduce illegal action such as fraudulent communications from individuals impersonating members on the

[16] The Union disputes using the terms "requirement" or "rule" to describe the relevant language in the letter to the employees (Tr. 58–59), but instead uses the term "practice" (R. Br. at 10). Regardless of the term used by Respondent, this "practice" violates Sec. 8(b)(1)(A) of the Act because when read in conjunction with the union-security clause, to maintain employment, the new hire employee would need to affiliate in-person at the Union office.

phone and forged documents. Furthermore, the Union argues that the in-person practice permits it the opportunity to educate new hire employees on the benefits of Union membership and gives them the ability to ensure that the information the Union has received on the new hire employee is accurate. By completing this exchange in one in-person affiliation visit, the Union argues that it has conserved its own resources and imposes minimal burden on the new hire employee (R. Br. at 10–11, citing *L-3 Communications*, supra; *Cequent Towing Products*, 357 NLRB No. 48 (2011); *Colt's Mfg. Co.*, 356 NLRB No. 164 (2011), vacated 487 Fed.Appx. 661 (2012)).

Although the Union has raised legitimate reasons for its requirement that new hire employees affiliate in person, its rule infringes on employees' rights to join or not join the Union by adding a requirement before the employees may fulfill their obligation under the union-security clause to affiliate with the Union. I find that this requirement is arbitrary in that it imposes a significant burden on employees whether affiliating as full members, nonmembers who pay an "agency" fee, or as *Beck* objectors. The Union presented no evidence to show that its method of in-person affiliation costs less than other potential methods. Like an overly broad rule set forth by an employer, the Union here established a narrow rule on how to affiliate rather than providing from the outset various options for new hire employees. Even though the Union claims to not enforce this requirement, reading the plain language of the letter to new hire employees, a reasonable person would infer that if he did not affiliate in-person with the Union, the Union could cause his discharge because he could not pay his dues. Simply because the Union has not sought an employee's discharge for failure to affiliate in-person, thereby violating Section 8(b)(2) of the Act is irrelevant.[17] Furthermore, the requirement to affiliate in-person coupled with the union-security clause is not the type of internal union matter that "Congress sought to insulate from the Board's consideration." *Badger Plants, Inc.*, 266 NLRB 386, 386 (1983). This combination is "a threat to the employees' employment relationship." Id. A threat need not be carried out to be coercive. The test for illegality under Section 8(b)(1)(A), as under Section 8(a)(1), is not whether employees were actually threatened or coerced, but whether the rule in issue may reasonably tend to coerce employees in the exercise of rights protected under the Act.

The Union also argues that its in-person affiliation practice is an internal union procedure, and does not fall under the scope of Section 8(b)(1)(A) of the Act (R. Br. at 12–13). Because this issue concerns how an employee can affiliate, I find it is not simply an internal union policy, but rather when read in conjunction with the union-security clause a mandatory requirement for new hire employees to fulfill their obligation under the union-security clause, and violates Section 8(b)(1)(A) of the Act. This requirement implicitly threatens employees with discharge. Section 8(b)(1)(A) of the Act permits unions to enforce only those rules which do not impair any labor law policy established by Congress. *Pattern Makers' League of North America, v. NLRB*, 473 U.S. 95, 105 (1985) (citing *Scofield v. NLRB*, 394 U.S. 423, 430 (1969)). Union restrictions on the right to resign have been found to be inconsistent with voluntary nature of unionism in Section 8(a)(3). See *Machinists Local 1414*, 270 NLRB 1330 (1984); *Auto Workers Local 148 (McDonnell Douglas)*, 296 NLRB 970 (1989). Similarly, union restrictions on the manner in which a new hire employee can join the union are also inconsistent with the voluntary unionism requirement found in Section 8(a)(3).

[17] The General Counsel did not allege a violation of Sec. 8(b)(2).

Respondent cites to several cases supporting its argument that the practice of in-person affiliation is an internal Union procedure not affecting membership, and that it did not restrain, threaten or coerce the Charging Party. However, these cases do not support Respondent's arguments. These cases involve intraunion discipline against union members, and the disputes do not interfere with employer-employee relationships. See *Sandia National Laboratories*, 331 NLRB 1417 (2000); *UMC of Louisiana, Inc.*, 287 NLRB 545 (1987). Here, again, unlike in the cases cites by the Union, the in-person requirement for affiliation when read in conjunction with the union-security clause implicitly threatens the employer-employee relationship if the new hire employee fails to affiliate in-person. If a new hire employee fails to affiliate in person, which is the only way to affiliate with the Union absent an exception granted by the Union, then the new hire employee cannot pay his dues and fees. Thereafter, the Union could go to the employer and state that the new hire employee has failed to pay dues and fees and should be discharged. It is irrelevant that the Union did not actually threaten the Charging Party. It is sufficient that a reasonable person would read the in-person affiliation requirement in conjunction with the union-security clause, and surmise that he or she must affiliate in-person or be discharged.

Respondent also argues that the Board recognizes that it is not a threat for a union to instruct a new hire employee to come to its office for administrative services (R. Br. at 13–14). The case cited by Respondent does not support this proposition. In *Sav-On-Drugs, Inc.*, 227 NLRB 1638 (1976), cited by Respondent to support its argument, the union attempted to organize a store with allegations of threats of loss of employment if the employees did not join the union. One of the allegations found not to be an 8(b)(1)(A) violation is when the union representative asked the Charging Party to sign a union authorization card in the store which would save himself a trip downtown, presumably to the union office. The facts presented in *Sav-On-Drugs* are thus not analogous to those presented here.

Accordingly, I find that Respondent violated Section 8(b)(1)(A) of the Act when it promulgated and maintained a rule requiring all new hire employees to visit the union office to affiliate in-person to fulfill their obligation under the union-security clause. Furthermore, Respondent violated Section 8(b)(1)(A) of the Act when it required the Charging Party to file his nonmember or *Beck* objection in-person. By promulgating and maintaining this in-person affiliation rule as well as the requirement to file *Beck* objections in-person, Respondent has implicitly threatened employees with discharge pursuant to the union-security clause for reasons other than failure to pay dues and fees, thus coercing employees in the exercise of their Section 7 rights.

CONCLUSIONS OF LAW

1. The Union is a labor organization within the meaning of Section 2(13) of the Act.

2. By failing to provide the Charging Party, when he requested reduced dues and fees, with a detailed apportionment of its expenditures for representational and nonrepresentational activities, and a detailed apportionment of the expenditures for representational and nonrepresentational activities of Respondent's affiliates, if any, the Union violated Section 8(b)(1)(A) of the Act.

3. By promulgating and maintaining a rule requiring all new hire employees to visit the

Union office to affiliate in-person in order to meet their obligations under the union-security clause, the Union violated Section 8(b)(1)(A) of the Act.

4. By requiring the Charging Party to file his nonmember or *Beck* objection in-person, the Union violated Section 8(b)(1)(A) of the Act.

5. By engaging the conduct described above, the Union has engaged in unfair labor practice affecting commerce.

REMEDY

Having found that the Union has engaged in certain unfair labor practices, I find that it must be ordered to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act.

The Charging Party requests an additional remedy of mailing the notices to the home address of each employee in the bargaining unit (CP Br. at 17–18). I decline to recommend such a remedy because the conduct of Respondent in this case does not warrant the recommendation of such an "extraordinary" remedy. Other than the violations found here, Respondent has not engaged in conduct designed to threaten, restrain or coerce its employees. Nor has it been shown that Respondent has violated the Act previously or that it will likely violate the Act in the future. And there is no reason to believe that the posting remedy I have ordered will not be an appropriate or effective remedy.

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended[18]

ORDER

The Respondent, United Food & Commercial Workers Union, Local 135, United Food & Commercial Union, AFL–CIO, CLC, San Diego, California, its officers, agents, and representatives, shall

1. Cease and desist from

(a) Failing and refusing to provide the Charging Party with a detailed apportionment of its expenditures for representational and nonrepresentational activities, and a detailed apportionment of the expenditures for representational and nonrepresentational activities of Respondent's affiliates, if any, when he requested reduced fees as a nonmember objector.

(b) Promulgating and maintaining a rule requiring all new hire employees to visit the Union office to affiliate in-person which in conjunction with the union-security clause implicitly

[18] If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

threatens employee discharge for reasons other than nonpayment of dues and fees.

(c) Requiring nonmember objectors to file their objections in person in the Unionoffice.

(d) In any like or related manner restraining or coercing employees in the exerciseof the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action.

(a) Provide the Charging Party with a detailed apportionment of its expendituresfor representational and nonrepresentational activities, and a detailed apportionment of the expenditures for representational and nonrepresentational activities of Respondent's affiliates, if any, and permit the Charging Party to retroactively challenge the breakdown of expenditures to within a 30-day period from being being provided with the breakdown.

(b) Revise and clarify the welcome letter to all new hire employees to reflect that employees are not required to affiliate in-person in the Union office including nonmember *Beck* objectors, and that failure to do so will not result in discharge under the union-security clause.

(c) Within 14 days after service by the Region, post at its offices in in San Diego, California, and San Marcos, California, copies of the attached notice marked "Appendix."[19] Copies of the notice, on forms provided by the Regional Director for Region 21, after being signed by the Respondent's authorized representative, shall be posted by Respondent and maintained for 60 consecutive days in conspicuous places including all places where notices to employees and members are customarily posted. In addition to physical posting of paper notices, the notices shall be distributed electronically, such as by email, posting on an intranet or an internet site, and/or other electronic means, if Respondent customarily communicates with its employees by such means. Reasonable steps shall be taken by Respondent to ensure that the notices are not altered, defaced, or covered by any other material.

[19] If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

(d) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

Dated, Washington, D.C. Feburary 19, 2015

Amita Baman Tracy
Administrative Law Judge

APPENDIX

NOTICE TO MEMBERS AND EMPLOYEES

Posted by Order of the
National Labor Relations Board
An Agency of the United States Government

The National Labor Relations Board has found that we violated Federal labor law and has ordered us to post and obey this notice.

FEDERAL LAW GIVES YOU THE RIGHT TO

Form, join, or assist a union.
Choose representatives to bargain on your behalf with your employer.
Act together with other employees for your benefit and protection.
Choose not to engage in any of these protected activities.

WE WILL NOT fail and refuse to provide objecting nonmembers with a detailed apportionment of the Union's expenditures for representational and nonrepresentational activities, and a detailed apportionment of the Union's expenditures for representational and nonrepresentational activities of affiliates, if any, when requesting reduced fees.

WE WILL NOT promulgate and maintain a rule requiring all new hire employees to visit the Union office to affiliate in-person which in conjunction with the union-security clause implicitly threatens employee discharge for reasons other than nonpayment of dues and fees.

WE WILL NOT require nonmember objectors to file their objections in person in the Union office.

WE WILL NOT in any like or related manner restrain or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL provide the Brandon Dion with a detailed apportionment of the Union's expenditures for representational and nonrepresentational activities, and a detailed apportionment of the expenditures for representational and nonrepresentational activities of the Union's affiliates, if any, and **WE WILL** permit the Brandon Dion to retroactively challenge the breakdown of expenditures to within a 30-day period from being being provided with the breakdown.

WE WILL revise and clarify the welcome letter to all new hire employees to reflect that employees are not required to affiliate in-person in the Union office including nonmember *Beck* objectors, and that failure to do so will not result in discharge under the union-security clause.

United Food & Commercial Workers Union,
Local 135, United Food & Commercial Workers
International Union, AFL–CIO, CLC
(Ralph's Grocery Company)

(Labor Organization)

Dated _____ By _____

(Representative) (Title)

The National Labor Relations Board is an independent Federal agency created in 1935 to enforce the National Labor Relations Act. It conducts secret-ballot elections to determine whether employees want union representation and it investigates and remedies unfair labor practices by employers and unions. To find out more about your rights under the Act and how to file a charge or election petition, you may speak confidentially to any agent with the Board's Regional Office set forth below. You may also obtain information from the Board's website: www.nlrb.gov.

888 South Figueroa Street, 9th Floor
Los Angeles, California 90017-5449
Hours: 8:30 a.m. to 5 p.m.
213-894-5200.

The Administrative Law Judge's decision can be found at www.nlrb.gov/case/21-CB-112391 or by using the QR code below. Alternatively, you can obtain a copy of the decision from the Executive Secretary, National Labor Relations Board, 1099 14th Street, N.W., Washington, D.C. 20570, or by calling (202) 273-1940.

THIS IS AN OFFICIAL NOTICE AND MUST NOT BE DEFACED BY ANYONE

THIS NOTICE MUST REMAIN POSTED FOR 60 CONSECUTIVE DAYS FROM THE DATE OF POSTING AND MUST NOT BE ALTERED, DEFACED, OR COVERED BY ANY OTHER MATERIAL. ANY QUESTIONS CONCERNING THIS NOTICE OR COMPLIANCE WITH ITS PROVISIONS MAY BE DIRECTED TO THE ABOVE REGIONAL OFFICE'S COMPLIANCE OFFICER, 213-894-5229.